

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 02-0314
Gross Retail & Use Tax
For the Years 1998, 1999, 2000

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ISSUES

I. Gross Retail & Use Tax-Purchases of oil for rental cars

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-4; IC § 6-2.5-3-6; IC § 6-2.5-5-8; 45 IAC 2.2-4-27(d)(4).

Taxpayer continues to protest the tax assessment on oil and oil filter purchases to maintain the operation of vehicles in its rental car business.

STATEMENT OF FACTS

Taxpayer operates short-term automobile rental locations in Indiana and several surrounding states. During the audit period, taxpayer had five Indiana locations. The audit raised a number of issues; the only one taxpayer protested concerns taxpayer's purchases of oil and oil filters used in the regular maintenance of the vehicle fleet. Taxpayer did not pay gross retail tax at the time of purchase. Taxpayer did not self-assess and remit use tax on these purchases. Therefore, the auditor made those adjustments to taxpayer's tax liability. Taxpayer's original protest was a purely legal argument based on differing interpretations of the applicable Indiana statutes and regulations. Taxpayer also protested the assessment of the 10% negligence penalty. Taxpayer's original protest was denied in part and granted in part. That part of the protest concerning the assessment of use tax on purchases of oil and oil filters where no gross retail tax was paid at the time of purchase was denied. That part of the protest concerning the penalty assessment was granted. Taxpayer timely requested a rehearing solely on the legal issue of interpreting the applicable Indiana statutes and regulations the Department relied upon to issue the original Letter of Findings. Taxpayer's request was granted based on its submission, in the request, of a complete analysis of the statutes and regulations at issue. That part of the original Letter of Findings pertaining to the penalty issue stands. Further facts will be added as required.

I. Gross Retail & Use Tax-Purchases of oil for rental cars

DISCUSSION

Taxpayer originally protested the assessment of use tax on its purchases of oil and oil filters. Taxpayer did not pay Indiana gross retail tax on the items of tangible personal property at the time of purchase. In its protest letter and written brief submitted as its hearing on the protest, taxpayer argued that oil changes were necessary for the proper maintenance of the cars that were rented out and were therefore not subject to tax. Taxpayer also argued that there was no basis in Indiana's statutes and regulations to tax oil and oil filters used in maintaining cars in businesses that rent out those cars to customers.

IC § 6-2.5-2-1 provides in relevant part:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
- (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.

IC § 6-2.5-3-2 and IC § 6-2.5-3-4 impose the use tax on items of tangible personal property if the gross retail tax was not paid at the time of purchase. Therefore, pursuant to IC § 6-2.5-3-6, taxpayer was liable for payment of use tax on the oil and oil filters purchased to change the oil on a regular basis for the proper maintenance of the vehicles in the rental fleet. These statutes and their governing regulations, at first blush, provided ample support for taxing these items of tangible personal property. There were no exemptions in the statutes or regulations that would relieve taxpayer of the duty either to pay the gross retail tax at the time of purchase, or to self-assess and remit the use tax.

Taxpayer argued that these items are necessary to maintain the proper operation of the rental vehicles; otherwise, they would be inoperable. Taxpayer also argued that inasmuch as IC § 6-2.5-5-8 did not require tax on the purchase of the cars for rental, the maintenance oil and filters should have been exempt as well. On the surface, taxpayer's argument was attractive; however, the department ruled that 45 IAC 2.2-4-27(d)(4) settled the issue:

Supplies furnished with leased property. A person engaged in the business of renting or leasing tangible personal property is considered the consumer of supplies, fuels, and other consumables which are furnished with the property which is rented or leased.

Therefore, the department reasoned, when taxpayer purchased oil and oil filters to change the oil in its vehicles, taxpayer consumed these supplies and either had to pay gross retail tax on them at the time of purchase or self-assess use tax and remit it to the Indiana Department of Revenue.

In its brief accompanying the request for rehearing, taxpayer presented arguments that touch upon the interpretation of 45 IAC 2.2-4-27(d)(4) as it relates to the rental car business.

Specifically, taxpayer argued that oil and oil filters are not furnished “with” the vehicles taxpayer rents out. Instead, taxpayer argues, oil and oil filters should be considered component parts of the vehicles because when a customer rents a vehicle, that vehicle is a complete vehicle. That is, a rental vehicle consists of an engine, drive train, brake system, and cooling system and all these systems’ component parts. Taxpayer drew an analogy between oil and oil filters as essential to engine performance as Freon to air conditioning, transmission fluid and filters to transmissions, etc. Under this interpretation, oil and oil filters are part of the property rented to customers; they are not supplies, fuels, or consumables furnished “with” the property.

Taxpayer also argues on rehearing that oil and oil filters are not “consumed” within the meaning of 45 IAC 2.2-4-27(d)(4). Rather, they are replaced because they become filled with particulate matter, not dissipated or consumed, subject to periodic replacement, such as fuel, air, and transmission fluids and filters. For that reason, oil and oil filters are replacement parts similar to tires, brake linings, shock absorbers, etc. Just because oil and oil filters need replacing more often than tires or brake linings does not, taxpayer argues, make them subject to Indiana’s gross retail or use taxes. As stated by taxpayer, “there is nothing in 45 IAC 2.2-4-27(d)(4) or otherwise justifying treating them differently than other replacement parts.”

Taxpayer has proffered sustainable reasons for supporting its interpretation of the regulation at issue. That supported interpretation of the regulation is sufficient to support taxpayer’s argument that oil and oil filters are not subject to either the state’s gross retail tax or use tax in the context of taxpayer’s rental car business.

FINDING

Taxpayer’s protest concerning the assessment of use tax on the purchase and consumption of oil and oil filters, used in regular oil changes for its fleet of rental vehicles, is granted, based on the complete analysis of the applicable statutes and regulations submitted in the request for rehearing.